

Appl. No. 09/529,575
Amendment dated May 23, 2005
Reply to Office Action mailed December 23, 2004

REMARKS

Claims 31, 32, 36, 41-46, and 48-53 are pending in the present application and stand rejected. Claim 42 has been objected to under 37 CFR §1.75(c) in this latest Office Action. Claims 41 and 42 have been amended to more clearly recite certain embodiments of the present invention. Applicants are attempting to place these claims in better form for allowance and/or appeal. No new matter has been added, however.

FORMAL MATTERS

Claim 42 has been objected to under 37 CFR §1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Accordingly, the Office has required the cancellation, amendment, or rewriting of the claim. The Office contends that since claim 42 further limits the delivery system as being a skin care composition, then if the absorbent article is the delivery system and the delivery system is a skin care composition, the absorbent article is the skin care composition. The Office then reasons that since claim 42 discloses the skin care composition comprises 0.01% to 50% by weight of the protease inhibitor, this same claim somehow broadens the scope of claim 31.

In order to expedite prosecution, Applicants have amended claims 41 and 42 to make the recitation of the claimed invention clearer based on the disclosure of the specification as originally filed. First, claim 41 was amended to clarify that the delivery system is "for releasably containing and delivering the protease inhibitor to at least a portion of the skin of a wearer of the article and wherein said delivery system". Support for this amendment is found at page 5, lines 23 - 34 of the specification. Additionally, claim 42 was amended to state that the delivery system takes the form of a skin composition. This is one of the many configurations (or forms) detailed in the specification at the same cite as mentioned for the amendment of claim 41. As amended, these claims (and the accompanying patent application specification) clearly lay out what the claimed subject matter is intended to be versus that which the Office contends. Applicants are not attempting to broaden the claimed subject matter in claim 42 over claim 31 or claim 41. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

REJECTIONS UNDER 35 USC § 103(a)

Claims 31, 32, 36, 41-46, and 48-53 remain rejected under 35 USC § 103(a) as being unpatentable over Caldwell. The Office sustains the rejections of these claims based on its contention that Caldwell need not teach that pentamidine is a "results-effective variable" since the rejection is

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based on the obviousness of a coating on an absorbent article to comprise 0.0001 to 30% of the total weight of the article of pentamidine. With respect to the upper limit of the range, the Office states that the coating on the barrier layer of an absorbent article would obviously not comprise such a large portion of the article, since the coating will only comprise a thin layer covering the surface area of the barrier layer. Furthermore, the Office goes on stating that it would have been obvious that a coating on the barrier layer of an absorbent article would comprise enough material to be at least the very low amount claimed by Applicants. Moreover, the Office responds to Applicants' counterargument of inherency by stating that the IC_{50} value is inherent to the compound for a given concentration. Therefore, the article of Caldwell is obviously modified to comprise pentamidine in the amount and will therefore have an IC_{50} value in the claimed range. Applicants continue to traverse the rejections.

Applicants respectfully submit that Claims 31, 32, 36, 41-46, and 48-53 are not obvious in view of Caldwell for a number of reasons. Again, Applicants maintain that Caldwell's generic disclosure of pentamidine as one of many antimicrobial agents suitable for inclusion into a barrier web is insufficient to render the present invention as obvious. Also, Caldwell does not teach or suggest a protease inhibitor having an IC_{50} of about 500 μ M or less. There is no recognition of the benefit conferred by such a value and there is therefore nothing to suggest that this property is even inherent in the materials disclosed by Caldwell. Consequently, it is unlikely that a skilled artisan would have even been motivated to attempt to arrive at the present invention based on Caldwell's disclosure.

CONCLUSION

Based on the foregoing reasons, Applicants respectfully submit that the Office has not made a *prima facie* case of obviousness and the rejections are therefore improper. Reconsideration and withdrawal of the rejections are respectfully requested. Allowance of each of the pending claims in the next Office Action is respectfully requested.

Respectfully Submitted,

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